

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: DECEMBER 16, 2010

SUBJECT: APPLICATION OF LIBERTY-BELL TELECOM, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, CASE
NO. LBT-T-10-01

On June 23, 2010, Liberty-Bell Telecom, LLC (“LBT” or “Company”) filed an Application, including a copy of its illustrative tariff, for a Certificate of Public Convenience and Necessity (“CPCN”), pursuant to *Idaho Code* §§ 61-526 through -528¹, *Idaho Code* § 62-604, IDAPA 31.01.01.111 (Rule 111), IDAPA 31.42.01 (Rule 202) and Procedural Order No. 26665, to provide facilities-based local exchange, switched exchange access and non-facilities-based interexchange telecommunications services in Idaho. *Application* at 1. On October 12, 2010, LBT filed a revised copy of its illustrative tariff.

On November 24, 2010, the Commission issued a Notice of Application and Modified Procedure with a 21-day comment period. Thereafter, Commission Staff was the only party to submit written comments within the established comment period.

THE APPLICATION

LBT is a Colorado corporation and lists its principal place of business as Denver, Colorado. *Id.* at 2. LBT is registered with the Idaho Secretary of State as a foreign corporation and lists CT Corporation System, 1111 West Jefferson, Suite 530, Boise, Idaho 83702, as its Idaho registered agent for service. *Id.* at 2, Exhibit C.

¹ Pursuant to the Idaho Telecommunications Act of 1988, specifically Idaho Code § 62-604(1)(a), LBT is exempt from Title 61 regulation.

LBT states in its Application that it “proposes to offer competitive local exchange services initially including, basic local exchange services and custom calling features for residential and commercial subscribers.” *Id.* at 2. Subsequently, the Company “proposes to offer exchange access services to interconnecting carriers.” *Id.* The Company’s local exchange services “will be provided on a facilities-based basis[,]” utilizing the unbundled network elements of its underlying carriers. *Id.* “[I]nterexchange services will be offered exclusively on a resold, non-facilities-based basis.” *Id.* LBT has no current plan to construct facilities or deploy equipment in Idaho. *Id.* at 5.

LBT’s proposed Idaho service territory will include all areas of Idaho currently being served by “Qwest Corporation, its sole incumbent local exchange carrier competitor.” *Id.* LBT attached a copy of its illustrative tariff to its Application. *See id.* at 7, Exhibit A. The Company states that it will begin negotiating an interconnection agreement with Qwest Corporation following the Commission’s decision regarding its Application. *Id.* at 8. LBT “avers that it has reviewed all of the Commission’s rules and agrees to comply with such rules.” *Id.* at 9. LBT requests a waiver of the escrow account requirement because it will not require its customers to submit advance payments or deposits in exchange for service. *Id.*

STAFF COMMENTS AND RECOMMENDATION

Staff stated that it worked with LBT and its attorney to bring the Company’s illustrative price list into compliance with the Commission’s Customer Relations Rules and Idaho statutes. After numerous corrections and revisions, Staff now believes that the Application and price list comport with the Commission’s Rules and Idaho statutes.

On December 14, 2010, a Consent Decree was issued and adopted between the Enforcement Bureau of the Federal Communications Commission (“Bureau”) and LBT. The Consent Decree terminated a Bureau investigation regarding potential violations of the Communications Act of 1934 and corresponding rules. Staff noted that this Consent Decree is a result of alleged international violations and does not have intrastate certification implications that would negatively impact the Company’s Application for a CPCN.

Staff recommends that the Commission grant LBT’s Application for CPCN, subject to the following conditions:

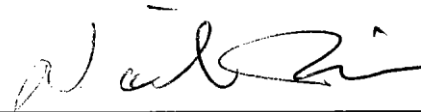
- a. LBT must comply with number pooling and reporting requirements of the North American Numbering Plan Administrator, as set forth in Commission Order No. 30425;

- b. LBT must provide all necessary reports and make appropriate contributions to the Idaho Universal Service Fund, Idaho Telecommunications Relay System, Idaho Telecommunications Service Assistance Program, and comply with all future reporting requirements deemed appropriate by the Commission for competitive telecommunications providers; and
- c. LBT shall relinquish its Certificate and all telephone numbers if, within one year of the issuance of a CPCN, the Company is not providing basic local exchange telecommunications services in Idaho as defined by *Idaho Code* § 62- 603(1).²

Finally, Staff recommends that the Company's request for a waiver of the escrow account requirement be granted.

COMMISSION DECISION

- 1. Does the Commission wish to approve LBT's Application for a Certificate of Public Convenience and Necessity?
- 2. Does the Commission wish to waive the escrow account requirement?



Neil Price
Deputy Attorney General

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² "Basic local exchange service" means the provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communication within a local exchange calling area.